United States Department of Labor
Employees' Compensation Appeals Board

CATHERINE L. FINNELL-CUDE, Appellant	)	
and	)	**Docket No. 03-1113**
	)	**Issued: February 26, 2004**
DEPARTMENT OF THE INTERIOR, Puxico, MO, Employer	)	

Appearances:
Donald Rhodes, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 25, 2003 appellant, through her attorney, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated March 4, 2003, which terminated her compensation benefits. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits, effective February 28, 2003, on the grounds that she had no further condition causally related to her May 5, 1999 employment injury.

FACTUAL HISTORY

On November 1, 1999 appellant, then a 37-year-old social services assistant, filed a claim for a traumatic injury occurring on May 5, 1999 when she injured her right knee playing softball.[1] The Office accepted appellant's claim for internal derangement of the right knee.

[1] Appellant worked as an intermittent employee.

Dr. William K. Kapp, a Board-certified orthopedic surgeon and appellant's attending physician, performed an authorized right knee arthroscopy with a partial synovectomy and lateral release on January 21, 2000. The Office paid appellant compensation beginning January 13, 2000 and placed her on the periodic rolls beginning March 26, 2000. On May 4, 2000 appellant resumed her regular employment.

In an office visit note dated October 23, 2000, Dr. Kapp related that he treated appellant on that date for an "apparent hyperextension injury to her right knee." He diagnosed right anterior knee pain and found that she could continue working. In an office visit note dated June 1, 2001, Dr. Kapp noted that appellant's electromyogram (EMG) and nerve condition studies were normal and stated that he was "at a loss" regarding the etiology of appellant's ongoing knee pain. He released her to return to work without restrictions on June 1, 2001.

In a chart note dated February 1, 2002, Dr. Bernard C. Burns, an osteopath, noted that he had last seen appellant on July 13, 2001.[2] He discussed appellant's complaints of knee and foot pain and noted findings of allodynia on the anterior surface of the patella. Dr. Burns diagnosed Type II complex regional pain syndrome and chronic pain syndrome. He found that appellant should remain off work for four weeks for nerve blocks to the lumbar spine and physical therapy. In a response to an Office inquiry, on February 13, 2002 Dr. Burns related that appellant was disabled from employment due to increased pain with a sleep and mood disorder. Dr. Burns continued to treat appellant for complex regional pain syndrome.

By letter dated August 22, 2002, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Carl Huff, a Board-certified orthopedic surgeon, for a second opinion evaluation.[3] In a report dated September 18, 2002, Dr. Huff diagnosed subjective arthralgia of the right knee unsupported by objective findings. He found no evidence of either reflex sympathetic dystrophy (RSD) or complex regional pain syndrome. Dr. Huff further opined that appellant had not sustained a new injury on October 23, 2000 and could resume her regular employment without limitations.

In a chart note and accompanying disability certificate dated October 10, 2002, Dr. Burns diagnosed complex regional pain syndrome and "[i]nternal derangement of the posterior meniscus and anterior cruciate." He opined that appellant was totally disabled from employment.

By letter dated November 5, 2002, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Marvin R. Miskin, a Board-certified orthopedic surgeon, to resolve the conflict in medical opinion between Dr. Burns and Dr. Huff. In a report dated December 10, 2002, Dr. Miskin discussed appellant's history of injury, reviewed the

[2] Dr. Kapp referred appellant to Dr. Burns in April 2001 for an EMG. In his initial evaluation dated June 12, 2001, Dr. Burns noted that appellant had improved after her May 1999 injury until a second injury in October 2000. He diagnosed complex regional pain syndrome. On June 20, 2001 the Office medical adviser noted that the evidence did not support a diagnosis of complex pain syndrome and further noted that the Office should ascertain what occurred in October 2000.

[3] On June 14 2002 the employing establishment notified the Office that appellant was still considered an on-call employee but that she had last worked on October 8, 2001 due to other employment.

medical reports of record and listed detailed findings on physical examination. He diagnosed "[i]ntense complaints of pain of the right knee without objective findings of injury or residual[s] of injury (extreme symptoms magnification)." Dr. Miskin stated:

> "I find no objective evidence to support [appellant's] current complaint of discomfort of her right knee. I find no evidence of injury or residual of injury related to the incident of May 5, 1999. [Appellant] has no atrophy measuring and comparing, calves and thighs and suprapatellar regions. There is no effusion. She has no instability of the right knee. She has complaints of subjective pain with very light touch, anteriorly, medially and [in the] intrapatellar region. She has inconsistent findings such [as] exhibiting complete extension of the knee when sitting and raising her leg and resisting complete extension to the final [five] degrees when lying supine. Arthroscopic visualization of the knee showed pristine menisci and slightly attenuat[ion] of the ACL [anterior cruciate ligament] but no tear of the ACL."

Dr. Miskin found that he could not relate any problems on or around October 23, 2000 to appellant's employment injury. He further opined:

> "I find no evidence to support a diagnosis of 'complex regional pain syndrome.' I am not familiar with such a term. I cannot find any objective evidence of injury to substantiate such a terminology. [Appellant] does complain of intense pain but in my opinion has significant symptom magnification and has significant functional overlay and emotional instability, which accounts for her subjective complaints, which do not correlate with her objective findings."

Dr. Miskin concluded that appellant required no additional medical treatment and could resume her regular employment without restrictions. He additionally noted that appellant could have worked in her usual employment as of February 1, 2002.

On January 21, 2003 the Office notified appellant that it proposed to terminate her compensation and entitlement to medical benefits on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Miskin, the impartial medical specialist, established that she had no further residual disability or condition, due to her employment injury.

In a response dated February 19, 2003, appellant, through her representative, argued that Dr. Miskin's opinion was flawed as he was unfamiliar with the condition of chronic regional pain syndrome. Appellant further argued that the opinion of her attending physician should be given greater weight because he was more familiar with her condition. She submitted literature regarding chronic regional pain syndrome and an office visit note dated February 5, 2003 from Dr. Patrick R. Knight, a surgeon. Dr. Knight reviewed appellant's records and noted that two physicians "had done thorough evaluations of her and did not find any physical findings that correlate with her complaints." On examination of the right knee, Dr. Knight found no swelling but some tenderness to light touch. He diagnosed knee pain and found that he had "nothing other to add that has not been discussed by her previous physicians. I do think she has some symptoms of RSD in her knee and the treatment for that has been appropriate." He noted that appellant's complaints were not supported by the physical findings.

By decision dated March 4, 2003, the Office finalized its termination of appellant's compensation benefits effective February 28, 2003.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[4] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[5] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[6] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[7] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.[8]

ANALYSIS

Where there exists a conflict in medical opinion and the case is referred to an impartial medical specialist, for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[9] In this case, the Office found a conflict between Dr. Burns, an osteopath and appellant's attending physician, and Dr. Huff, a Board-certified orthopedic surgeon and Office referral physician, on the issue of whether appellant had residuals of her accepted employment injury. The Office requested that the impartial medical specialist address whether appellant had any further disability from her employment injury and whether she required further medical treatment. Based on the impartial medical specialist's report, the Office terminated appellant's entitlement to compensation and authorization for medical treatment.

The Board finds that the opinion of Dr. Miskin, a Board-certified orthopedic surgeon, selected to resolve the conflict in opinion, is based on a proper factual and medical history, is well rationalized and supports that appellant's internal derangement of the right knee ceased by February 28, 2003, the date the Office terminated her authorization for medical benefits. Dr. Miskin accurately summarized the relevant medical evidence, provided detailed findings on examination and reached conclusions regarding appellant's condition, which comported with his findings.[10] On examination, Dr. Miskin found no evidence of atrophy, effusion or instability and noted "inconsistent findings" on physical examination. Dr. Miskin concluded that appellant had

[4] *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[5] *Id*.

[6] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[7] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[8] *Id*.

[9] *Leanne E. Maynard*, 43 ECAB 482 (1992).

[10] *See Melvina Jackson*, 38 ECAB 443 (1987).

no residuals of her employment injury and stated that she could resume her regular employment duties without restrictions. He further opined that appellant required no further medical treatment based on his finding that she had no further condition causally related to her March 5, 1999 employment injury. Dr. Miskin provided rationale for his opinion by explaining that appellant had no objective findings supporting her complaints of right knee pain and showed symptoms of "significant symptom magnification." He further found no objective evidence of an injury such as complex regional pain syndrome or that she sustained any condition on October 23, 2000 due to her employment injury. As Dr. Miskin provided a detailed and well-rationalized report based on a proper factual background, his opinion is entitled to the special weight accorded an impartial medical examiner.

The remaining evidence submitted subsequent to Dr. Miskin's report is insufficient to overcome the weight accorded him as the impartial medical examiner. Appellant submitted a report from Dr. Knight, who diagnosed right knee pain and noted that she had "some symptoms of RSD in her knee." He indicated that appellant's subjective complaints were unsupported by the physical findings. Dr. Knight did not specifically attribute appellant's knee pain or symptoms of RSD to her accepted employment injury and thus his opinion is of diminished probative value. Further, the Board has held that a diagnosis of "pain" unsupported by objective evidence does not constitute a basis for the payment of compensation.[11] Additionally, the Office did not accept appellant's claim for RSD. Appellant bears the burden of establishing causal relationship for any condition not accepted by the Office.[12] In this case, Dr. Knight noted symptoms of RSD but did not address the issue of causation. Medical evidence that does not offer any opinion on the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[13] Dr. Knight also found that appellant's complaints were not supported by the objective findings. The Board finds that Dr. Knight's report is of reduced probative value and insufficient to establish that appellant had any residual condition after February 28, 2003, due to her employment injury.

On appeal, appellant argues the report of Dr. Miskin is insufficient to show that appellant does not have complex regional pain syndrome as Dr. Miskin indicated that he was unfamiliar with the term. However, Dr. Miskin clearly found that appellant had no "objective evidence of injury" but rather symptom magnification and a functional overlay. Additionally, the Office never accepted that appellant sustained a complex regional pain syndrome due to her employment injury. As noted, it is appellant's burden of proof to submit rationalized medical evidence supporting a relationship between the complex regional pain syndrome and her May 5, 1999 employment injury. Regarding appellant's argument that the opinion of her attending physician is entitled to the weight of the medical evidence, the Board notes that as the impartial medical examiner, Dr. Miskin's report is entitled to the greatest weight as it is sufficiently rationalized and based on a proper factual background.[14]

[11] *John L. Clark*, 32 ECAB 1618 (1981).

[12] *Charlene R. Herrera*, 44 ECAB 361 (1993)

[13] *Linda I. Sprague*, 48 ECAB 386 (1997).

[14] *Brady L. Fowler*, 44 ECAB 343 (1992).

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective February 28, 2003 on the grounds that she had no further condition causally related to her May 5, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 4, 2003 is affirmed.

Issued: February 26, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member